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October 31, 1997

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND-DELIVERY

William F. Caton, Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Re: Notice of Ex Parte Presentation in CC Docket No. 92-297

Dear Mr. Secretary:

Pursuant to Section 1.1206(a)(2) of the Commission's Rules, this is to notify you that on October 30, 1997, Steven A. Zecola, President and CEO of Zip Communications Corporation ("Zip") and Lawrence R. Sidman and Leo R. Fitzsimon of Verner, Liipfert, Bernhard, McPherson and Hand, representing Zip, met with Dan Phythyon, Chief of the Wireless Telecommunications Bureau, Jerome Fowlkes, Deputy Chief of the Auctions Division of the Wireless Telecommunications Bureau, and James Rubin, Legal Advisor to the Chief of the Wireless Telecommunications Bureau, to discuss Zip's request for a 60 day delay of the start of the auction for local multipoint distribution services ("LMDS") scheduled to begin on December 10, 1997.

The focus of the discussion revolved around the need for more time for entrepreneurs such as Zip to raise sufficient capital to participate meaningfully in the LMDS auction. This need for additional time has been necessitated by the elimination of installment financing benefits for small businesses by the Commission in the *Second Order on Reconsideration*.^{1/} In addition, we discussed the chilling effect on investors of the uncertainty that exists concerning the Commission's LMDS rules.

1/ *Second Order on Reconsideration*, Rulemaking to Amend Parts 1, 2, 21, 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, To Establish Rules and Policies for Local Multipoint Distribution Service And For Fixed Satellite Services (CC Docket No. 92-297) (rel. Sept. 12, 1997) ("*Second Order on Reconsideration*").

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As described in the Joint Application for Review filed by Zip along with WebCel Communications, Inc. and LBC Communications, Inc., we noted that the elimination of installment payment financing less than three months before the scheduled start of the LMDS auction has fundamentally altered the amount of capital small businesses must raise in order to participate meaningfully in the auction. Entrepreneurs such as Zip created their business plans in reliance on the availability of installment financing, attracting significant interest from potential investors. The elimination of installment payment financing means that companies such as Zip now have to raise several times the amount of capital that they had to raise with installment payment financing in order to maintain their business plans to provide significant competition in the provision of telecommunications services. After negotiating deals with entities willing to invest in reliance on the availability of installment payment financing, entrepreneurs have been forced to renegotiate these deals and to approach new investors in order to raise the significant additional sums made necessary by the Commission's elimination of installment payments. The negotiation of such significant deals with new investors requires time. Fundamental fairness dictates that the Commission should therefore delay the auction by 60 days.

In addition to issues of fundamental fairness to affected bidders, we also discussed how a modest delay would promote the public interest by ensuring the participation of a wide range of well-funded bidders. A delay would allow entrepreneurs and minority bidders to finalize the restructuring of their financing in response to the elimination of installment payment financing. The participation of these bidders will result in increased competition both during the auction and in the provision of new competitive communications services to the public. Moreover, a short delay would help bring certainty to the auction by allowing bidders to solidify their financing prior to, rather than during or subsequent to, the start of the auction. This would decrease the risk of underfunded bidders defaulting on their auction payment commitments due to their belief that they will be able to raise sufficient funds during the auction. If the Commission chooses to proceed with the December 10 auction start date, it will virtually ensure that the auction will raise less revenue than would be realized if it delayed the auction to allow entrepreneurs to secure adequate financing. A short delay would promote a more successful auction by ensuring that bidders adversely affected by the elimination of installment financing have the ability to bid vigorously for licenses.

We also discussed the chilling effect that the current uncertainty surrounding the LMDS rules is having on potential investors. For example, we noted that the Commission has not yet issued an order concerning the final partitioning and disaggregation rules for LMDS. Resolution of this issue will likely have a significant impact on investor's decisions on whether to participate in LMDS. In addition, we noted that the comment cycle for the Commission's proposal to set minimum bids for the auction will not be completed until November 10. This means that it is quite likely that an Order on this critical issue might not be released until just before the scheduled start of the auction. Thus, bidders will have little if any time to incorporate the minimum bid levels adopted by the Commission into their bidding strategies. Resolution of these and other uncertainties in this docket would provide

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investors and bidders alike with a greater level of comfort going into the auction. The modest delay requested by Zip would have the ancillary benefit of allowing the Commission to resolve these uncertainties prior to the start of the auction.

In response to concerns expressed by Commission staff that the requested delay in the auction would likely lead to further delays, we responded that the 60 day delay requested by Zip is a one time request and is a specific response to the Commission's elimination of installment payment financing. We explained that the Commission has ample tools at its disposal to grant this delay and that the Commission could ensure that this will be the only delay in the auction. The elimination of installment financing was a major issue which clearly justifies an adjustment to the auction schedule. No other issue exists which would justify a subsequent delay by the Commission. Moreover, potential judicial intervention in the auction schedule is beyond the control of the Commission and is independent of the issues of concern to Zip and other entrepreneurs. The Commission should consider Zip's request for a 60 day delay on its own merits, taking into account the issues of fundamental fairness to bidders adversely affected by its *Second Order on Reconsideration*.

In conclusion, we suggested that a 60-day delay of the start of the auction would provide sufficient time for entrepreneurs such as Zip to raise the additional capital needed to compete in the auction as a result of the elimination of installment payment financing while providing the Commission time to resolve several outstanding issues in this docket. Such a modest delay would ensure wide participation in the auction by small businesses such as Zip, fulfilling the goal of Congress to promote the participation of small businesses in the provision of new telecommunications services.

Pursuant to Section 1.1206(a), an original and one copy of this notice are being filed with your office.

Any questions concerning this matter should be directed to the undersigned.

Respectfully submitted,



Lawrence R. Sidman

Enclosure

cc: Dan Phythyon
Jerome Fowlkes
James Rubin, Esq.